[Unapproved and Subject to Change]
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

February 10, 2005

Call to order: Chairwoman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 9:51 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairwoman Randolph, Commissioners Sheridan Downey, Phil Blair, and Tom Knox were present. Commissioner Pamela Karlan was absent.

Item #1. Public Comment.

Cheryl Maki, a former city council member and mayor of the City of Auburn, California, said she came here to speak about an injustice that was done to her. On June 15, 2004, she received a letter from the Commission's Enforcement division that she said threw her life into turmoil. The letter said that a complaint had been filed against her regarding a decision she had made to abstain from voting on a development project that was close to her home. At the time of the vote, she stepped down from the dais and did not vote on the project. She later discovered that she actually lived 770 feet from the project, so her abstention was unnecessary. She explained that the June 15 letter stated that it appears that she had violated the Political Reform Act (PRA). Ms. Maki said the letter was sent to her, and the matter was later closed without her participation. She was never called or notified. Since then, she received a letter exonerating her, but she also had a front page newspaper article written about her as well as political cartoons and letters to the editor. She explained that after six months of wrangling with Enforcement staff, she was able to have evidence submitted. She said the Enforcement division did not give her a fair chance to present evidence. Instead, the division made a decision based not on video tapes, minutes, or audio tapes, but instead on the word of just one person. She finally received a letter of exoneration on December 1. Ms. Maki stated that she was not here just for herself, because the damage is done in her case, but for future public officials. She suggests that the Commission should call a person who is being investigated to find out the truth. She pleaded that the Commission not make another decision based on one-sided information for the future of local politicians who are not in it for the money but because they love their community. She said, because of this, it is hard to think of the Commission as the "Fair" Political Practices Commission.

In response to a question by Commissioner Knox, Ms. Maki stated that someone else, not the Commission, filed the complaint, and that the Commission then failed to investigate it. She explained that the letter to her said that it "appears that on July 14 and July 28 that she failed to leave the Council chambers required pursuant to the PRA," and that according to the information provided she failed to follow the correct procedure. She explained further that the letter issued a threat, saying that the circumstances of the case could be used as aggravating information in any future prosecution brought against her a the violation of the PRA. But, she said she never did anything wrong.

Commissioner Downey recalled reading the correspondence on this case last Fall and agreed with Ms. Maki in large part. The letter from Enforcement outlined a complaint that had been received and did not directly say that the Commission believed the complaint and found it to be true. But, the wording of that letter was probably not the best. Commissioner Downey said the Commission agreed that, as far as staff can tell from the resulting investigation, there was no violation on the part of Ms. Maki. The unfortunate wording of the letter was the Commission's way of advising her that it had received her complaint and providing her an opportunity to defend herself, but she did not need to defend herself because the Commission did not pursue the complaint.

Ms. Maki responded that the letter said that she violated provisions of the PRA.

Commissioner Downey explained that the letter meant to say that there was an allegation that she had violated the PRA. The Commission had not yet done the investigation at that point.

Chairman Randolph added that that is why the Commission made sure to send a subsequent letter to clarify that there was no violation. It is also interesting to note that the Commission had opposed the PRA provision that requires council members to leave the chambers when they disqualify themselves from voting on a matter because the Commission understands the frustration with following these kinds of rules when an official is simply trying to disqualify herself. The Commission has determined that there was no violation and sent a letter to Ms. Maki to that effect. Unfortunately, the Commission has little control over how the local press chooses to give greater weight to the first letter than it does the second letter.

Ms. Maki opined that the press would have given less weight if the wording had said "we are not investigating" period, and not such things as "it appears that you did violate."

Charles Wachob, City Attorney for the City of Auburn for over 20 years, provided constructive suggestions to the Commission because his experience with the Commission has been exasperating for him. He asked that his comments be viewed as constructive so that other public officials will not be victimized like Ms. Maki. In Ms. Maki's case, the Council action occurred in July of 2003. The complaint came into the Commission in August of 2003. The advisory letter sent to Ms. Maki from the Commission's investigator occurred in June of 2004. When that letter arrived, Mr. Wachob's reaction was that he needed to see the information that the investigator relied upon. He made a public records request and was given the entire file on the matter. There was no evidence in the file except the letter from the complaining person, who also had a lawsuit against the City because of the project on which Ms. Maki abstained from voting. There was no contact by the Commission's investigator with anyone from City Hall, the City Manager, the City Council, Ms. Maki, or his office. There was no record of the action on file.

Mr. Wachob opined that if an attorney in his office sent a letter like the Commission did with a conclusion based on no facts, that attorney would not be working for him. He suggested that the Commission have a factual basis for sending such an advisory letter. In addition, as a courtesy, the public official should be given immediate notice that a complaint has been received. He

added that for the most part, public officials want to cooperate and would likely be willing to help with the investigation.
Mr. Wachob further explained that Commission staff had a lack of understanding of the rules. The Council action occurred in July 2003. One month prior, the Commission's regulation relating to public officials being allowed to stay in the room during a vote from which they abstained, had become operative. Yet the letter that Ms. Maki received incorrectly suggested that she was required to leave the room. Under the new regulation, Ms. Maki was entitled to remain in the Council chambers after she disqualified herself, but that was one of the criticisms in the advisory letter.

Mr. Wachob also suggested that after an advisory letter is sent, there should be a process in place where a public official has some recourse to that letter. His first call was to the author of the advisory letter asking whether Ms. Maki has an appeal right. He was told that there was no appeal right. He added that that means there is no due process; she was tried and convicted without any opportunity to participate and based on no information.

Commissioner Knox suggested that Mr. Wachob overstates what occurred. Ms. Maki was not tried and was not convicted.

Mr. Wachob said it was a figure of speech and that he would retract it.

Commissioner Knox explained that the Commission received the complaint. He added that Mr. Wachob makes a very good point that the time lag is excessive. The Commission notified Ms. Maki in language that may have been unfortunate, but the Commission notified her of the complaint and that the Commission would investigate it. Eventually, the Commission did investigate and decided not to pursue it. The Commission is not necessarily without fault. There may be ways to avoid putting public spirited citizens and officials at risk the way that this scenario put Ms. Maki. But, the fact is, the Commission investigated and found no grounds for the complaint. He asked whether this summary was accurate.

Mr. Wachob replied that Commissioner Knox's summary was not accurate. The investigation occurred after Ms. Maki received the advisory letter. Mr. Wachob and Ms. Maki then requested that the investigation be reopened and then provided the minutes, the records, and the tapes that the Commission did not have. The only "investigation" that occurred prior to Ms. Maki receiving an advisory letter ten months later, according to the Commission's file, was the complaint letter from the individual who was upset with Ms. Maki.

Commissioner Knox said there was a letter in the file from the complaining witness. The Commission is required to process that letter as a complaint. The Commission notified Ms. Maki, in language that was unfortunately too strong, that the Commission had received this complaint. He asked whether that was correct.

Mr. Wachob responded that the correspondence that she received was the advisory letter that she received ten months later.

Chairman Randolph said that part of the problem is the closing language of the letter, which stated that the complaint could be used as aggravating circumstances. The beginning of the letter said that Ms. Maki may have violated the law but that the Commission was not pursuing an investigation. The letter was basically saying that the Commission was not going to continue with the complaint, cautioning Ms. Maki to follow the rules in the future, and adding that this may be used as aggravating circumstances. The unfortunate part was the statement that this could be used as aggravating circumstances when it had not been fully investigated. But, the letter did not say the Ms. Maki had affirmatively violated the law. It was not a conviction as Mr. Wachob characterized it. Ms. Randolph further noted that while the regulation was not in effect, the statute was, so the regulation that outlined the procedure may not have been in effect at the time. The Commission passed the regulation several months after the statute went into effect, so the statute existed at the time.

Mr. Wachob responded that he did not want to take up any more of the Commission's time. He stated that he was trying to give the Commission some suggestions from the perspective of a City Attorney who is on the front line of trying to make public officials comply with the regulations on a monthly basis. He suggests to have in place some mechanism where the public official receives an advisory letter, whether or not there has been an investigation – we disagree that there was an honest effort at an investigation here – but whether or not that occurs, there must be some method for an official to have some redress. Mr. Wachob's characterized his personal experience in this case as a "collective stiff-arm" from the Commission's staff. He wrote all of the staff that he could, and his last recourse was to write to the Commissioners. He wrote to the Commission's General Counsel and received no answer. He contacted Mr. Wallace and the other side of the operation and basically got nothing back. He said it has been an exasperating experience to try to get someone's attention to right a wrong. The Commission's mission statement on its website includes fair interpretation and application of regulations, but that did not occur here. He hopes that his suggestions are taken up. He added that Ms. Maki should receive a letter of apology, but he does not believe that is going to happen. He said it is a closed file as far as the Commission and its staff is concerned, and therefore the full accountability will not occur. He disagrees that the letter was simply "poorly worded;" rather it was a conclusion in the eyes of the public who were made aware of it on the front page of their local paper. He thanked the Commissioners for their time.

Chairman Randolph thanked Mr. Wachob and Ms. Maki for their comments and suggestions.

Assembly Member Gene Mullin, on behalf of Assembly Member Loni Hancock who could not be present at the meeting, made comments that were prepared jointly by both of them. He began by explaining that Californians passed the PRA in 1974 in response to the Watergate scandal. The PRA was the most detailed disclosure law in the nation and created the FPPC. The goal was for the FPPC to protect California's democratic values. A complaint before the Commission regarding the campaign committee, Citizen's to Save California (CSC), raises serious questions for Assembly Member Mullin, Assembly Member Hancock, and other members of the legislature. The complaint argues that CSC was created for the express purpose of supporting the Governor's agenda. It has been well publicized that the Governor intends to fundraise substantial amounts of money, perhaps as much as $50 million, and pursue a series of ballot measures to push his legislative agenda. CSC is the primary fundraising committee for these

potential initiatives. The Commission has clear regulations that govern and regulate campaign contributions to candidate controlled campaign committees. These rules restrict contributions from special interests to $22, 300. But because CSC, which the Governor has supported and for which he fundraises, claims "not to be controlled" by the Governor, it is allowed to raise unlimited sums and does not have to abide by the contribution limits. Assembly Member Mullin said that this is a loophole "large enough through which you could drive a Hummer."

Assembly Member Mullin explained that the Commission has ruled that candidates and officeholders are subject to Proposition 34's contribution limits for ballot-measure committees that they control. He advised that the Commission should extend that ruling to fundraising by such candidates for those ballot measure committees. There is very little difference in a state official calling up a contributor and asking for a contribution to a ballot-measure committee or to his or her own campaign committee; the effect is exactly the same. It is imperative that the Commission act quickly. He added that just yesterday, the Schwarzenegger campaign and its allies filed a lawsuit, which is a clear admission that the law does cover them. If the campaign was confident that it was acting within the law, there would be no need for them to sue the Commission.

Assembly Member Mullin, representing Assembly Member Loni Hancock, urged the Commission to take immediate action on the complaint filed by The Rest of Us.org. It is imperative that the questions raised by the fundraising activities of CSC be investigated immediately. He also requested that, due to the severity of the complaint, any public statements from the Commission about the pending case be postponed until all of the facts have been fully reviewed. He added that nobody is above the law. The Commission is entrusted with protecting democracy and ensuring that campaign contribution limits are followed. The public must be assured that the fundraising activities of CSC, in concert with Governor Arnold Schwarzenegger, follow the letter of the law.

Ned Wigglesworth introduced himself as an analyst with The Rest of Us.org, a non-partisan watchdog group that works on campaign finance and related issues. He described the current collaboration by Governor Schwarzenegger and the CSC in pursuit of their mutual agenda as a "bicycle built for two," where the Governor announces the policy and the plan and the CSC pursues it. He explained that the Governor and CSC work together to solicit large donations from lobbyists and wealthy elites. The problem is not their agenda but the six figure donations that are raised for a committee that is controlled by the Governor. This is a violation of the spirit and letter of California state law and Commission regulations. CSC has now filed a lawsuit alleging that the relevant regulation is unconstitutional, which suggests that even they do not believe their own "hype" about being independent. The Governor and CSC are collaborating in violation of state law. Mr. Wigglesworth said that is why The Rest of Us.org filed the complaint against them for accepting unlimited donations and why he encourages the Commission to investigate the matter vigorously and seek injunctive relief against this activity. He added that if the Commission does not act, then The Rest of Us.org will.

Mr. Wigglesworth explained that there is a possible loophole caused by Commission regulations 18530.9 and 18225.7. This loophole appears to allow a candidate-controlled committee to collaborate with a non-candidate-controlled committee to evade contribution limits. Both

Republicans and Democrats have indicated their interest in establishing candidate-controlled ballot committees. He encouraged the Commission to investigate and close the loophole so that candidates cannot sidestep California's contribution limits.

Donna Gerber, Director of Government Relations for the California Nurses Association (CNA) and on behalf of CNA, supported the request of the previous two speakers regarding this matter. She explained that CNA believes that the Governor is violating the law and urges the Commission to take immediate action, including injunctive relief. Nursing is a regulated profession. Nurses are subject to the law, to the enforcement of the law, and to regulations. She said CNA believes that the Governor should be subject to the law and the regulation as he practices governing in California and urges the Commission to take immediate action.

Item #2 and #3. Approval of the January Commission Meeting Minutes and Special Meeting Minutes.

Commissioner Downey moved to approve items #2 and #3.

Commissioner Knox seconded the motion.

Commissioners Downey, Blair, Knox, and Chairman Randolph voted "aye." The motion carried with a 4-0 vote.

Items #4, #5, #6, #7, #8, #10, #11, and #12.

Commissioner Blair moved approval of the following items in unison:

Item #4. In the Matter of Terry Morgan and Terry Morgan for West Hollywood City Council, FPPC No. 01/215. (1 count).

Item #5. In the Matter of Donald Schrader, FPPC No. 01/254. (1 count).

Item #6. In the Matter of Kings Arco Arena Limited Partnership, FPPC No. 04/165. (1 count).

Item #7. In the Matter of Consumers and Their Attorneys, Yes on Proposition 30, FPPC No. 00/101. (5 counts).

Item #8. In the Matter of Dick Frank, and Re-elect Dick Frank Assessor, FPPC No. 02/1076.

Item #10. Failure to Timely Disclose Late Contributions.

a. In the Matter of MirSaied Kashani, FPPC No. 2004-0762. (1 count

b. In the Matter of Sandra Lee, FPPC No. 2004-0763. (1 count).

c. In the Matter of Casey Wasserman, FPPC No. 2004-0766. (1 count).

d. In the Matter of James & Janet Ray, FPPC No. 2004-0767. (1 count).

e. In the Matter of B&B Framing, Inc., FPPC No. 2004-0768. (1 count).

f. In the Matter of Frank Mancuso, FPPC No. 2004-0774. (1 count).

g. In the Matter of Joseph Eger, FPPC No. 2004-0780. (2 counts).

Item #11. Failure to Timely File Major Donor Campaign Statements.

a. In the Matter of Mitchell D. Kapor, FPPC No. 2004-0791. (1 count).

b. In the Matter of George Ross, FPPC No. 2004-0795. (1 count).

c. In the Matter of Michael Hall Kieschnick, FPPC No. 2004-0796. (1 count).

d. In the Matter of L. Thomas Lakin, FPPC No. 2004-0806. (1 count).

e. In the Matter of 25th Ward Regular Democratic Organization, FPPC No. 2004-0811. (1 count).

f. In the Matter of Filter Recycling Services, Inc., FPPC No. 2004-0819. (1 count).

g. In the Matter of Axel & Inge Karlshoej, FPPC No. 2005-0004. (1 count).

Item #12. Failure to Timely File Statements of Economic Interests.

a. **In the Matter of Catalina Madrigal, FPPC No. 04/0635.** (1 count).

b. **In the Matter of Seng Cha, FPPC No. 04/641.** (1 count).

c. **In the Matter of Julie Hartsell, FPPC File No. 04/754.** (3 counts).

d. **In the Matter of Stephen Laymon, FPPC File No. 04/621.** (1 count).

Commissioner Knox seconded the motion.

Commissioners Blair, Downey, Knox, and Chairman Randolph voted "aye." The motion carried with a 4-0 vote.

Item #9. In the Matter of Calsan, Inc., FPPC No. 01/641. (3 counts).

Commissioner Downey explained that these were relevantly small contributions that were made by an individual who was then reimbursed by the Calsan company. He asked how many counts there were.

Senior Commission Counsel Melodee Mathay responded that there were three counts.

Commissioner Downey summarized that the parties stipulated to a $4500 fine, and the maximum penalty possible was $6,000. He said this situation seemed to be a situation where the use of the individual to forward the money might have been a matter of convenience for the company. If the company was trying to hide behind the individual or skirt local contribution limits, then the Commission should go for the maximum penalty. He asked whether the investigation revealed why or how the individual was used to transmit the funds.

Ms. Mathay responded that the individual was a Vice President of the company and attended fundraising events for the candidates and then submitted the reimbursements through expense accounts. Thus, the company ended up paying for the contributions that were listed on an expense account. There have been numerous Enforcement cases that are similar to this one, where executives with companies submit fundraiser attendances on their expense accounts.

Commissioner Downey opined that this was simply corporate convenience and there was nothing nefarious about this case.

Ms. Mathay responded that it did not appear so, although it was a poor practice. The individual was disclosed as the Vice President of Calsan on the campaign statement. Thus, they were not trying to hide it, but it is still considered laundering, and the penalty falls in line with other similar cases.

Chairman Randolph added that it was an illegal practice.

Commissioner Downey moved to approve item #9.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Knox, and Chairman Randolph voted “aye.” The motion carried by a 4-0 vote.

(The Commission temporarily skipped over item #13 in order to wait for Commission Counsel to return from court on another matter.)

Item #14. Pre-Notice Discussion of Regulations

Assistant General Counsel John Wallace explained that the first item concerns the disclosure disqualification provisions of the PRA. Generally, under the PRA, all public officials must disclose all of their economic interests that could foreseeably be affected by the exercise of their official duties. For the majority of public officials, their agency determines if they are required to file disclosure forms by designating them in their conflict-of-interest code (the code) for the agency. The code also sets forth the scope of disclosure for each position. The PRA sets out specific procedures for adopting these codes. The procedures are based on the Administrative Procedures Act (APA), which ensures that employees and the public have adequate notice of the adoption process and an opportunity to be heard about the content of the code. However, certain agencies, due to their status as constitutional agencies or by virtue of an express statutory exemption, are not subject to the APA. Thus, the first new regulation for consideration under this item, 18750.2 established an alternate procedure for these agencies that still ensures adequate public notice and participation. Proposed regulation 18750.2 is substantially the same as regulation 18750, which sets out the procedures for other state agencies, except that the proposed regulation eliminates the APA references and procedures. The decision point within the regulation concerns the actual scope of the disclosure that should be required. Option A would require the agency to post the notice on the home page of the agency website, which is the method currently used by the Legislature. Both the Legislature and the University of California (UC) have advocated that option. Option B would also require some publication in newspapers throughout the state, which is the method currently used by the UC.

Mr. Wallace said the second proposed new regulation 18755 concerns a smaller subgroup of UC and California State University (CSU) employees. Early in the history of the PRA, the Commission recognized the difficulty in applying the conflict-of-interest disclosure and disqualification rules to researchers at UC and CSU campuses. The problem arose in deciding whether a researcher can accept a grant for research in circumstances where the researcher's own economic interests might be affected. In 1978, in light of this difficulty, the Commission adopted a special rule for researchers which still exists in a modified form in 18702.4. The original exception was a blanket exception for researchers that took all of the researchers' decisions out of the conflict-of-interest provisions. In 1982, the exception was narrowed and was changed to require disclosure by the researchers in connection with research funded by non-governmental entities, but it still did not require disqualification except under unusual circumstances. In this case, the regulation allowed participation despite the conflict, so long as the grant was reviewed by an independent committee established by the campus. The early policy decision of the Commission has led to a unique and hybrid disclosure system for these researchers. Proposed regulation 18755 is an effort to codify the procedures.

Mr. Wallace pointed out that subdivision b of the proposed regulation establishes a filing schedule for these researchers which is similar to the schedule for other public officials under the PRA. While the proposed regulation would codify the current process, the UC has requested that the final filings be eliminated because they feel that filing the information after the grant has been accepted, and the research completed, does not serve any purpose. Mr. Wallace said that staff believe that the final filing should be continued, but that they will have an opportunity to be heard at an IP meeting on the matter. He also explained subdivision d. When the Commission decided that disclosure would be required by these researchers under certain circumstances, it limited the disclosure to funding of research by non-governmental entities. After that decision,

the Commission agreed that certain non-governmental entities also did not pose as great a risk of conflict as a public agency. As a result, the Commission and the UC agreed to create a list of exempt non-governmental entities, which are listed in subdivision d(1) of the proposed regulation, and this would apply to researchers at both the UC and CSU systems. Subdivision d(2) of the proposed regulation outlines the criteria for including entities on the list. Mr. Wallace noted that CSU submitted a comment letter in support of the codification of the list.

Chairman Randolph said she was concerned about putting a list in the regulation rather than just noting that the Commission will maintain the list on its website so that it can be changed on a staff level.

Mr. Wallace responded that currently, the list is maintained on the UC's website. In his recollection, the UC made a change to the list only once, and it went to the Commission in memo form but was never codified. But, another approach could be to use this as a staff-regulated list of exempt agencies.

Chairman Randolph asked what procedure is used to change the list.

Mr. Wallace responded that there was one request that he recalled where the Commission received the list as an attachment to a memo that described the system and the Commission agreed to it.

Chairman Randolph summarized that it was a one-meeting action, standard agenda notice; whereas, if the list was in the regulation, then the change would need to go through a more formal regulatory process.

Mr. Wallace requested the Commission's permission to move forward with the regulation.

Commissioner Knox asked whether the Commission can take the list out of the regulation?

Chairman Randolph responded that the list is not currently in a regulation.

Commissioner Knox continued that perhaps it ought to be in a regulation.

Mr. Wallace responded that it is a policy decision, which is why staff drafted the list in the proposed regulation.

Chairman Randolph asked about the APA notice requirement that does not apply.

Mr. Wallace said that the APA notice is through the notice register. The codes are treated just like regulations.

Commissioner Blair commented that posting notice in the newspaper is silly.

Commissioner Knox agreed.

Chairman also said she thought option A (website posting) was better, since there is no cost.

Mr. Wallace replied that staff will bring the regulation back for adoption with option A and will have an IP meeting on the matter.

Item #13. In the Matter of Harry J. Pappas, FPPC No. 02-723.

Chairman Randolph explained that the process is for the Commission to hear the basic information on this matter during the public meeting and then go into closed session to deliberate on whether to accept the Administrative Law Judge (ALJ) decision.

Senior Commission Counsel Bill Williams stated that the primary issue that the Enforcement division has with the proposed ALJ decision has to do with the application of the law to the undisputed facts. It is undisputed that Mr. Pappas failed to file late contribution reports for 5 late contributions totaling $127,000. Four of these late contributions totaling $27,000 were made in local judiciary races and a district attorney's race, all of which occurred in the same county. The fifth unreported late contribution was for $100,000 in the 2002 Governor's race. It was one of the ten largest contributions given to that candidate in that race. The sixth violation was for failure to electronically file the second semi-annual campaign report for 2002. This campaign report involved $40,000 in contributions.

Mr. Williams explained that the proposed decision inappropriately applied the law in the following areas: The ALJ found that the late contribution violations were serious, but because there was no intent to deceive, the penalties were set at only 40% of the maximum $5,000. Staff believes that the ALJ did not give appropriate weight to the seriousness of the violations and treated the negligence factor as almost being a mitigating factor. Also, the ALJ did not find a pattern of violations. Staff believes that 5 violations of the same type during the same time period constitute a pattern of violations. The proposed decision did not set forth any penalty for the electronic non-filing of the semi-annual campaign statement. This is based on a finding of inadvertence, which staff believes is not supported by the record. Regardless of whether it was inadvertent or negligent, staff thinks that some level of penalty was required for that violation. All $127,000 in contributions made by the respondent in 2002 were not properly reported. Mr. Williams added that the Enforcement division recognizes that the penalties assessed were not *de minimus*, but in a substantive sense, the recommended penalties did not conform with the PRA and are not consistent with other Commission orders in similar cases. This case involves very important issues, in a concrete context, that were incorrectly decided. The Enforcement division requests that the Commission reject the proposed decision and decide the matter on the record.

Ben Davidian, from Sweeney, Davidian, and Greene, represented Harry Pappas. He explained that the reason the ALJ found that the violations were serious is because they stipulated, that they take the PRA seriously and feel that any violation of the PRA is serious. Mr. Davidian said that this case is not on the same level as a campaign money laundering situation or a conflict-of-interest, for example. These were innocent mistakes, mistakes that were done, not in a pattern, but because Mr. Pappas did not know what the rules were at the time. The contributions all occurred within a week or so of each other. The ALJ found that this was not a pattern but a

succession of errors in addition to mistakenly neglecting to file the electronic copy of his end-of-year major donor statement even though he filed the hard copy of that document. So, Mr. Pappas reported the information, but he did not report it both ways. He now understands the process, has a reporting service and a law firm that monitors all of this, and takes his responsibilities very seriously. This Enforcement action resulted in a $10,000 fine, but it also resulted in a finding by the ALJ that there was no intentional misconduct and that these were neither negligent or inadvertent errors. Mr. Davidian said he thought the fine by the ALJ was a bit high, but they are not arguing that here. He believed the ALJ got it just right in terms of what happened, the nature of the conduct that occurred. The ALJ saw the witnesses, heard the testimony and the argument, and rendered a reasonable decision. Mr. Davidian urged the Commission to adopt that decision. If the Commission chooses not to adopt the ALJ decision, then he asked that the Commission review the entire record and file to make a determination based on what the ALJ was able to see.

Commissioner Downey asked Mr. Davidian whether, if his client was charged only with the electronic filing of the report, it would have been in the discretion of the ALJ to decline to impose any fine at all.

Mr. Davidian responded that it certainly would have been. The ALJ likely would have considered that this was a new law that had been passed just a short time before. A lot of people made the error because they did not realize that they had the electronic filing obligation. The fact that he filed the hard copy in the appropriate places was evidence that he was attempting to comply with the law. He missed one step, so a warning letter would have been sufficient. Mr. Pappas tried to file correctly and thought he did it right and testified in the hearing that his staff was actually proud of themselves that they filed it a couple of weeks early. The ALJ saw the totality of the circumstances and she could have imposed no penalty even if there was one count. But, the ALJ saw that there were a number of counts and gave an overall evaluation that was reasonable.

Commissioner Downey asked Mr. Williams if the ALJ imposed the maximum $5,000 fine on the $100,000 contribution to the Jones campaign and levied fines of $1,000 each on the other 5 counts, yielding the same total, would the Enforcement division be complaining about the ALJ decision.

Mr. Williams responded that the Enforcement division takes issue with the comparative fine given to the $100,000 contribution being the same as the other contributions in light of what appeared to be a more important violation. However, a $1,000 fine relative to the other violations would be inadequate. Whether the Enforcement division would have sought rejection of the decision, he could not say in a hypothetical sense, but he would have felt that $1,000 for the other contribution violations was inadequate because they were very substantial contributions in a local race, where contributions of $3,000 and $6,000 in a local judiciary race are very significant contributions. They were all in the same county and involved three different judiciary races and the district attorney in the same county. Enforcement staff believed that was very serious because the violations were so concentrated in a specific area. Thus, if the case had come out differently, the Enforcement division would have taken issue with it.

Mr. Williams added that he believed that Mr. Pappas electronically filed his first semi-annual report, so the "new law" argument rings hollow since this was his second semi-annual report. So, he evidently knew about it for the first report but forgot about it for the second.

Mr. Davidian added that if the Commission reconsiders the ALJ's decision, the Commission should look at all of the information in the file. If there is any suggestion that there was some nefarious scheme to help the Capitan brothers, it is important that the Commission note that Mr. Pappas had helped raise the Capitan brothers when their father was sent off to war in the military. The boys were members of his church whom he had watched grow up and for whom he had deep affection and pride. So, there was nothing nefarious about making contributions to them because he likes these men and wanted to see them get elected. This is hardly a pattern of some nefarious scheme.

Item #15. Legislative Report.

Executive Director Mark Krausse gave a quick update on Senate Bill 25, which passed out of the Senate Elections Committee with one no vote from the Committee Chair, Senator Bowen. SB 25 received a rule waiver and should therefore be eligible for a vote on the Senate Floor any day.

Mr. Krausse also advised that the deadline for bill introductions is later this month and the Commission will likely see a few more bills before then.

SB 145, the new office-holder expense fundraising bill, was introduced. This issue used to be called the "last-term officeholder expense fundraising bill," which the Commission has supported in the past. Proposition 34 says that a candidate may not collect a contribution after the date of election unless the candidate has debt, so there may be a situation where a candidate has just been elected to the Senate and he or she has four years and no money to fly back to the district or to hold town hall meetings and such. The Commission supported the notion of fundraising for office holder expenses for termed-out members. This bill has been introduced to provide an addition $3,000 per year for each sitting legislator to collect over and above the current contribution limits.

Item #16. Executive Director's Report.

Executive Director Mark Krausse had nothing to add.

Item #17. Litigation Report.

Chairman Randolph added that the hearing for the lawsuit that was filed yesterday regarding the Commission's regulation requiring that contribution limits apply to candidate-controlled ballot-measure committees will be held on March 2.

Commissioners went into closed session at 10:50 a.m.

Chairman Randolph returned from closed session at 11:45 a.m. and announced that the Commissioners voted to accept the Administrative Law Judge decision in the matter of Harry J. Pappas.

The meeting adjourned at 11:46 a.m.

Dated: February 16, 2005

Respectfully submitted,

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Whitney Barazoto
Commission Assistant

Approved by:

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Liane Randolph
Chairman